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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1957.

No. 913

PAUL CRUMP,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ of Certiorari To The Supreme Court of Illinois.

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(Petitioner has furnished nine copies of the printed record used in the Illinois Court.)

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VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ of Certiorari
To The Supreme Court of Illinois.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Paul Crump, states that he is presently under sentence of death imposed by the Criminal Court of Cook County (Chicago) Illinois, and prays that a Writ of Certiorari issue to the Supreme Court of Illinois to review the judgment of that court affirming his conviction. In support thereof, petitioner shows as follows:

A.

REFERENCE TO REPORTS OF OPINIONS.

The opinion of the Supreme Court of Illinois affirming petitioner's present sentence is reported at 12 Ill. 2d 402, 147 N.E. 2d 76. (Appendix 1a)

A prior opinion of the Illinois Supreme Court reversing a previous sentence imposed upon petitioner for the same alleged offense, appears at 5 Ill. 2d 251, 125 N.E. 2d 615 (Appendix 9a).

B.

STATEMENT OF JURISDICTIONAL GROUNDS.

The proposed opinion of the Supreme Court of Illinois respecting petitioner's instant conviction was rendered on November 20, 1957. Petitions for rehearing were filed, and the opinion, as modified on the denial of said petitions, was delivered on January 15, 1958 on which date judgment was entered. On January 17, 1958 execution was stayed indefinitely pending disposition of this petition for certiorari.

Jurisdiction herein is invoked pursuant to Title 28 U. S. C. A. Section 1257.

C.

QUESTIONS PRESENTED FOR REVIEW.

1. Is the due process clause of the Fourteenth Amendment violated by a state practice of admitting into evidence a defendant's purported confession, provided only that the confession is corroborated by extrinsic evidence, and without regard to the manner in which it may have been obtained?

2. Is the due process clause of the Fourteenth Amendment violated by admission into evidence of a purported confession obtained by repeatedly arresting a suspect and imprisoning him for protracted periods without charge or process; and further by subverting his right to counsel until such time as the one confined shall have confessed to the commission of a criminal offense?

3. May a state, within the limitations of the due process clause of the Fourteenth Amendment:

(a) Challenge a Defendant on trial before the jury to take a lie detector test; and

(b) Call upon the jury to come out of the jury box and shoot the Defendant?

4. May a state within the limitations of the Fourteenth Amendment to the Constitution introduce into evidence a confession which is the product of the following facts and circumstances:

(a) The defendant is arrested without process shortly following a crime; is questioned concerning it for three days at two different police stations (during which peri-

od he claims to be brutally mistreated) and is then released by the police without any charge being placed against him.

(b) Two days thereafter, the defendant, being ill and fevered, is confined to his bed at home with injections of sulpha drugs and penicillin.

(c) At 4:30 A.M., ten police officers raid the defendant's home, arrest him in his bedroom and take him into custody, without warrant or process.

(d) The defendant is thereupon continuously questioned for nine hours, whereby is elicited a statement which the prosecutors considered untrue.

(e) The defendant is held overnight incommunicado.

(f) On the following day the defendant is questioned periodically without being fed for about twelve hours, culminating in his confession.

(g) The defendant, during his detention, is held at three different police stations in the custody, at various times, of some forty police officers.

(h) The defendant is a Negro laborer of partial high school education.

(i) The defendant is interrogated for two days within the same building which houses all of the criminal courts of the county, but is not brought before a magistrate until after he has confessed.

(j) The prosecutor and police persist in their questioning notwithstanding the defendant's attorney advising him in their presence to make no statement.

(k) The defendant is interrogated while handcuffed and claims to be brutally mistreated, which claim is denied by the testimony of approximately forty-five police officers and prosecutors who had been instrumental in his detention and questioning.

Or is the totality of the above circumstances beyond the limits of permissive state action so as not to be consonant with a defendant's right to due process of law?

D.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

(a) Amendment Fourteen to the Constitution of the United States, provides in its relevant parts:

> "• • • nor shall any state deprive any person of life, liberty, or property without due process of law • • •."

(b) Section 7 of Division VI of the Criminal Code of Illinois (Chapter 38, Section 660 Illinois Revised Statutes 1957) providing as follows:

> "When an arrest is made without a warrant, either by an officer or a private person, the person arrested shall, without unnecessary delay, be taken before the nearest magistrate in the county, who will hear the case, for examination, and the prisoner shall be examined and dealt with as in cases of arrests upon warrant."

E.

STATEMENT OF THE CASE.

On March 20, 1953, in the course of a robbery at a Chicago business concern, one of the plant guards was killed. The robbery was committed by a group of five men.

On the same night, Petitioner, a Negro laborer, was arrested at the home of an acquaintance. He was not sought or suspected at that time, and his arrest was of the type characterized by the Illinois Supreme Court as "accidental". (Appendix 2a)

Petitioner was first held for three days of questioning at two police stations. He was confined and interrogated by a number of police officers. He contended, and police denied, that he was brutally mistreated during this period. Throughout his detention, he was "booked open"—i.e., no charges were placed against him (Abst. 140). Three days after being arrested, he was released by the police.

The Petitioner complained that during his first detention, he was kicked (Abst. 17), suspended by his back and wrists (Abst. 22) until he became unconscious (Abst. 24), questioned continuously, and finally released with the warning that he could anticipate a repeat performance in the event that he did not find for the police another man for whom they were looking (Abst. 25).

The Petitioner returned to his home and became ill (Abst. 26). He was feverish, and took medication. Two days after his release, he went to a physician. The phy-

sician testified that Petitioner had a temperature of 103.6° and that he treated Petitioner by injecting penicillin twice and giving other medications (Abst. 563).

That evening, Petitioner retired in his home. At about 4:30 on the following morning, March 26, 1953, (Abst. 76) a squad of ten police officers (Abst. 77) raided his home and arrested him. They searched the house for money, and, in the words of his wife, "were tearing up the place" (Abst. 69). Petitioner was taken to the Criminal Court Building in Chicago (Abst. 73).

Petitioner arrived at the Criminal Court Building at 5:00 A.M. in the custody of the arresting officers. He testified, and the police denied, that he was beaten in the parking lot on arrival at the building and was treated brutally until an Assistant State's Attorney arrived between 6:30 and 7:00 A.M. (Abst. 29, 30). Petitioner was questioned continuously over a period of two days. He testified that this questioning was marked by extreme brutality, which testimony was denied by all of the police involved, some forty in number. The Petitioner was not taken before any of the numerous judges in the building. At about 1:45 P.M. on March 26, he was questioned before a court reporter by two State's Attorneys and five policemen (Abst. 192).

[At this interrogation, the State contends that he made a statement admitting participation in the robbery but denied knowledge of a shooting (Abst. 476). The decision of which review is sought, suggests that Petitioner at this time fully confessed his commission of a murder (Appendix 2a, 3a). The opinion is not supported by the record in this regard.

[Similarly, the opinion states (Appendix 3a) that "*of considerable significance* is the fact that" the gun was found

at the place designated in the March 26 statement (Abst. 486). Actually, the gun was found about eight blocks from the place thus designated (Abst. 439). Moreover, the second statement, in which by the language of the Illinois Court, "minor discrepancies were ironed out" so that the statement "constituted the final draft of what was agreed to be the truth", recites that the Petitioner's first story of the disposal of the guns was *untrue*; that the guns had been thrown away by someone else out of the Petitioner's presence and that the Petitioner had only hearsay knowledge of the event (Abst. 516).

[We invite this Court's attention to the difference between record and opinion statements of fact, owing to the Court below having characterized discrepancies between the March 26, 1:45 P.M. statement and the March 27, 10:30 P.M. statement as "minor discrepancies". In fact, the discrepancies amounted to the difference between the denial and admission that Petitioner was personally responsible for the killing.]

At 6:00 or 6:30 P.M. on March 26, Petitioner was lodged in a police lockup for the night (Abst. 163). Petitioner's captors admitted they were ordered to hold him incommunicado (Abst. 165). The following morning, March 27, the Petitioner was again taken to the Criminal Court Building (Abst. 170) where he was again questioned. At about noon on the 27th Petitioner asked to speak with his lawyer, and the lawyer was called (Abst. 180). In the presence of the chief prosecutor, the Petitioner's attorney instructed him to say nothing unless the lawyer were present (Abst. 181).

Notwithstanding this advice of counsel, the interrogation continued, culminating in Petitioner's confession at 10:30 P.M. on March 27. There is no denial that the Petitioner was not fed on that date (Abst. 31).

On the following morning, Saturday, March 28, 1953, a confession signing ceremony was staged in the State's Attorney's office. Five "civic leaders" were present by invitation of the State's Attorney to witness the Petitioner's capitulation. These witnesses were: Dr. Brams, personal physician to the State's Attorney of Cook County, (Abst. 125); John E. Owens, attorney, a friend of the Chief of the State's Attorney's Police (Abst. 205) and former student and long-time acquaintance of the State's Attorney. Owens parenthetically expressed admiration for the State's Attorney—"I like his civic way of handling things" (Abst. 208). Jeremiah Buckley, attorney, was an acquaintance of Owens (Abst. 205). He did not testify. Graydon Megan was an acquaintance of Owens (Abst. 105) and a friend of the Chairman of the Board of the company which was robbed (Abst. 108). Megan was also associated with the "Chicago Crime Commission" (Abst. 200), a civic group which intends to stamp out crime. Finally, Mrs. L. Robert Mellin, the ultimate civic leader ("I was endorsed by *all* the leading clubs and civic groups in Chicago," Abst. 191) further identified herself as a long-time friend of the State's Attorney and was a former member of the Board of Education (Abst. 191), of which the chairman of the board of the company that was robbed had been president (Abst. 108).

None of the civic leader witnesses was present during any part of the interrogation of the Petitioner. They were invited only to see him sign the confession. Each of them testified that in response to a question from the Prosecutor, the Petitioner stated that he had been well-treated (Abst. 122, 104, 204). Civic leader and Mrs. L. Robert Mellin reminisced that the *group* of which Petitioner was a member chorused that they had had wonderful treatment—"Those were their words" (Abst. 190).

Civic leader Brams attended because the State's Attorney stated that he wanted a group of responsible witnesses to see "how a court procedure is conducted in the open, on a fair and square basis" (Abst. 124). In the latter connection, we invite this Court's attention to the fact that the signing rites occurred on March 28, that the confession was made on March 27 at 10:30 P.M., and that Dr. Brams was invited to attend *several days before* the 28th (Abst. 123-124).

Although his name and address were known to the Prosecutor, who had previously telephoned him (Abst. 181), Petitioner's attorney was neither invited to the signing ceremony nor advised as to what was taking place.

Petitioner's Motion to Suppress the Confessions was overruled, and they were introduced into evidence against him at the trial.

In the course of the trial, the Prosecutor challenged the Petitioner to take a lie detector test (Abst. 541) and suggested to the jury that the testimony relative to the bullets fired into the body of the decedent should make the jury "want to come out of that jury box and do the same thing to (Petitioner)" (Abst. 633).

The jury found the Petitioner guilty of murder and fixed his punishment at death (Abst. 646).

F.

THE RAISING OF THE FEDERAL QUESTIONS.

At the outset of the trial, the Petitioner moved that his confession be suppressed on the ground that it was the product of duress, brutality and coercion by the Police (Abst. 4). The Motion was denied (Abst. 4). Petitioner requested that the jury be charged that the police had a duty to take him before the nearest magistrate without unnecessary delay. This request was refused (Abst. 645). Petitioner was also refused a requested charge that the jury might evaluate the trustworthiness of an admission in the light of the circumstances under which it was made (Abst. 645). Petitioner was further refused a requested charge that a confession was evidence if voluntarily made, and that if the jury found it to be involuntary, they might wholly disregard it, and that it was for the jury to determine from the evidence whether the confession was voluntarily made (Abst. 644).

Instead, the jury was instructed that it *must* consider the confession as evidence; that it might consider the question of coercion as bearing upon the *truthfulness* of the confession, and might wholly disregard the confession if it considered it untrue. At the same time, the Court instructed the jury that it had no right to disregard the confessions, and that the jurors were the sole judges of the credibility of the confessions, whose truthfulness was for them to determine (Abst. 638-639).

Upon conviction, Petitioner moved for a new trial, complaining that the Court erred in admitting the confessions in that they were the product of duress and brutality, and

that the reception of the confessions into evidence violated the rights of the Petitioner under the Constitution of the United States (Abst. 648). The motion also assigned error in wrongful instruction to the jury, in unlawful cross examination of the Petitioner, and in inflammatory and prejudicial closing argument (Abst. 650-651). The motion was denied.

Petitioner was sentenced to death (Abst. 652-653).

On appeal to the Supreme Court of Illinois, Petitioner contended that the admission of the confession denied him due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States. The Illinois Supreme Court, by its original opinion, specifically addressed itself to the Petitioner's federal constitutional claim. (Appendix 2a) Reviewing the facts, the opinion of that Court examines the statements contained within the confession itself. The Court observed that it is "of considerable significance" the police found the weapon at the place designated by Petitioner's confession and that "of more than passing relevance" is the fact that the Petitioner, within the confession, admitted ownership of a hat, mask and gloves found at the scene of the crime. The opinion notes that more than fifty police officers and other State's witnesses testified that the Petitioner had not been struck or abused (Appendix 5a), and that in the presence of "civic leaders" Petitioner stated that he had received "wonderful treatment" (Appendix 4a). A reading of the opinion reveals that the Court considered the confession to have been corroborated by extrinsic circumstances, and was admissible for that reason. The opinion does not pass upon Petitioner's claim of coercion.

The opinion of the Court does not mention the challenging of the Petitioner to a lie detector examination, and suggests that inflammatory argument was permissible here because Petitioner's counsel had made an "unfair argument" that the length of time that Petitioner's case had been pending raised an inference of reasonable doubt as to his guilt.

Petitions for Rehearing were filed, challenging the propriety of admitting a confession merely because it was corroborated and without regard to its involuntary character. Attention was called to the recent decisions in *Mallory* v. *United States*, 354 U.S. 449; 1 L. Ed. 2d, 1479; 77 S. Ct. 1356; and *Fikes* v. *Alabama*, 352 U.S. 191, 1 L. Ed. 2d, 246; 77 S. Ct. 281. The Court was again asked to hold that the admission the Petitioner's confession violated, *inter alia*, his federal constitutional right to due process of law (Record 18, p. 9), and to pass upon those of Petitioner's claims which it had theretofore ignored (Record 14, 16). Rehearing was denied (Record 19) and, with minor modifications not here material, the original opinion was adopted.

G.

PROCEEDINGS IN FEDERAL COURTS.

No proceedings have been had in any Federal Court.

H.

ARGUMENT.

The holding of the Illinois Court in this case that the admissibility of a confession is governed solely by the truthfulness of that confession without regard to whether that confession was the product of coercion, should not be permitted to stand. It means, in effect, that defendants in criminal cases may be denied due process in this regard without limitation, if the resulting confession is corroborated so that it may be considered to reflect accurately Petitioner's guilt of the offense charged.

This doctrine has long been repudiated by this Court in its consideration of the due process requirement of the Fourteenth Amendment. In *Lisenba* v. *California*, 314 U.S. 219, 236; 86 L. Ed. 166; 62 S. Ct. 280, the Court said:

> "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false."

The principle was articulated with unmistakable clarity in *Brown* v. *Mississippi*, 297 U.S. 278; 80 L. Ed. 682; 56 S. Ct. 461 (1936) and has been reiterated as recently as last year in *Fikes* v. *Alabama*, 352 U.S. 191; 1 L. Ed. 2d 246; 77 S. Ct. 281.

In the instant case, the trial court instructed the jury that the question of coercion was relevant only to the issue of the *reliability* of the confession (Abst. 638-639). The highest Court of Illinois has certified the propriety of the instruction and the consequent denial of Petitioner's rights to due process, by holding that since the confession

was factually reliable, it became, on that basis, admissible, all without reference to the manner in which it was obtained.

Prior to the instant case, the policy of the State of Illinois toward police interrogations of suspects had been expressed in *People* v. *Hall*, 413 Ill. 615; 110 N.E. 2d 249, wherein the Illinois Supreme Court held that a confession was admissible if voluntary and inadmissible if coerced. In the *Hall* case, however, the Illinois Court rejected the concept that illegal detention rendered a confession inadmissible, notwithstanding the Illinois Statute, cited at Section D of this Petition, is not significantly different from Rule 5A of the Federal Rules of Criminal Procedure, requiring immediate production before a magistrate of a prisoner arrested without process. The *Hall* case articulated, as the policy of this State, that coerced confessions should be excluded primarily because they were unreliable. The Illinois Court observed (413 Ill. 615, 624; 110 N.E. 2d 249, 254:)

> "A voluntary confession • • • is the highest type of evidence—an involuntary confession obtained by brutality or coercion is wholly unreliable and is the most flagrant violation of the principles of freedom and justice • • • But the courts, too, must enforce the law against confessed criminals so long as that may be done without encroaching upon the fundamental principles of freedom and justice. Questioning suspects is indispensible in law enforcement • • • "

However, to hold, as Illinois does, that coerced confessions are inadmissible because they are unreliable, a court must be prepared to hold, as a logical corollary, that a factually reliable confession must be admitted into evidence though obtained by coercive means. This is precisely the distorted result which has been reached in the case now before your Honors. The police of Illinois are

thus practically invited to treat and mistreat suspects as they will, provided only that the resulting confession can be corroborated.

To avoid holding that unlawful detention might be coercive, the Illinois Court has evolved a doctrine of "accidental arrest" (Appendix 2a). So far as we can determine from the opinion which we ask your Honors to review, an "accidental arrest" is an arrest which does not culminate in a confession. This situation may be resolved by means of a re-arrest which, should it produce a confession, becomes a non-accidental arrest. The Supreme Court of Illinois does not delineate in its opinion the number of accidental arrests which it will countenance in any particular case before it will hold that police officers have violated a suspect's right to due process of law. For aught it appears, there is no limitation upon the number of accidental arrests to be allowed, for until a confession is extracted, a conviction cannot ensue of which the suspect-victim can complain upon appeal. Should he then complain, it is a sufficient answer under the present holding of the Illinois Court that his confession has been corroborated. Thus, neither the innocent nor the guilty can complain effectively under the doctrine of "accidental arrest". It is of incidental interest that the Supreme Court of Illinois did not use the term "unlawful arrest". We can only assume from this, that the doctrine of accidental arrest will hereafter supplant in theory as it has in fact, the law regarding unlawful arrest.

As a consequence of such holdings, citizens of Illinois have grown almost to accept as their lot in life the possibility of being detained for days by the police, without being charged and without the possibility of redress. The practice of arresting suspects for general interrogation—"accidental arrests"—has become so widespread as di-

rectly to threaten the liberty of every citizen of this State, and so notorious as to have become the subject of the lead editorial of Chicago's second largest newspaper on March 11, 1958. The editorial, reprinted at Page 29a of the Appendix, shows the result of a survey conducted by the American Civil Liberties Union, disclosing that during 1956, an average of 250 persons per month were held incommunicado and without warrant for two or more days by the police of the City of Chicago alone. The alarm expressed by the editorial indicates that the figures did not improve in 1957.

Nor is the alarm confined to journalists. It has become a matter of concern to all thoughtful citizens of this jurisdiction, both that the police arrogate to themselves the power to determine who shall be at large and who shall be confined, and that the Courts do not see fit to curb these unlawful practices. At Page 33a of the Appendix, we have reprinted a news story from the Chicago Sun Times of March 29, 1958 showing that the Federal Grand Jury has undertaken an investigation of the widespread civil rights violations by the Chicago Police Department. From this account, it appears that an inspection of the records of one court alone shows 16,000 documented cases of unlawful arrest by the Chicago Police during 1956, and that the total number of such arrests "probably is three or four times as high" (Appendix 34a). Thus, citizens of Illinois are free to walk the streets or sleep in their homes by sufferance of the police. This freedom, however, hangs in a delicate balance. The Chicago policeman revokes such privileges whenever their continued exercise becomes inconvenient to him, as occurs sixteen thousand or more times annually.

In this aspect, the plight of the Petitioner differed from that of his nameless unlawfully imprisoned brothers of March, 1953, only in that he was subjected to the inter-

rogative techniques of forty different policemen. Reinforcements, observers, and prosecutors brought to fifty the throng interested in obtaining a confession from Petitioner.

Five of the observers were "civic leaders", individuals of lofty ideals and limited experience in these matters. Their pious function was to spray gentility upon a signing ceremony intended to screen whatever had gone before. An invitation was extended to one of the "civic leaders" *to attend the signing ceremony days prior to the time that Crump actually made a confession,* (Abst. 124) demonstrating the prosecutor's disdain for Petitioner's ability to withstand the interrogative techniques to be employed.

That the police granted Petitioner's request to see his attorney invites the conclusion that this action was merely another manifestation of the self-confidence which had impelled invitations to the signing of a confession by a prisoner who was even then maintaining his innocence. The attorney's advice to the Petitioner, "Say nothing," delivered in the presence of his captors, was excellent advice in theory, but impossible of execution. The incident serves to demonstrate that the prosecuting authorities of Illinois are merely more subtle than those of Alabama in their denial of the right to counsel. *Fikes* v. *Alabama,* 352 U.S. 191; 1 L. Ed 2d 246; 77 S. Ct. 281. Surely there can be no difference between refusing access to counsel, as was done in *Fikes,* and permitting, but then subverting, a visit by counsel, as was done in Petitioner's case. For immediately upon the departure of Petitioner's counsel, effective steps were taken to assure that his advice could not be followed.

This Court has held that the due process clause invalidates a conviction of a prisoner not represented by counsel "where the circumstances show that his rights

could not have been fairly protected without counsel." *Pennsylvania* v. *Claudy*, 350 U.S. 116, 118; 100 L. Ed. 126, 130; 76 S. Ct. 223. Surely, if a defendant is permitted counsel only after the prosecutors have used him as they wish, his right to counsel is a shadowy right indeed.

To term both of Petitioner's "confessions" voluntary, although they were highly contradictory, is to fly in the face of reason. If the first "confession" had been "voluntary", it would almost surely, by the reasoning of the Illinois Courts, have been reliable. The fact that the prosecutors felt impelled to obtain a second confession, even more "voluntary" and "reliable" than the first, presents a situation highly reminiscent of that disclosed in *Chambers* v. *Florida*, 309 U.S. 227; 84 L. Ed. 716. It seems inconceivable that the Petitioner's confession was so "voluntary" that he insisted on giving it at 10:30 P.M. and was unable to wait until the following morning to condemn himself. The conclusion is irresistible that the Petitioner confessed in the hope of avoiding any more of the "wonderful treatment" that had so impressed Mrs. Mellin.

Upon his confession, rewards were swift in coming in the form of a change of captors and environment. Petitioner had theretofore been lodged overnight in a police station (Abst. 167), by a remarkable coincidence the same in which he had been held during his prior "accidental" detention (Abst. 139). Having confessed, and with a signing ceremony scheduled for the following morning, he found himself lodged not in a common cell, but in the witness quarters of the County Jail (Abst. 38). The prosecutors deny that this change of accommodations was made in response to the Petitioner's contention that having confessed, it was only fair that he should not again be remanded to the police for more "wonderful treatment"; but the change is not otherwise explained.

In connection with Petitioner's admission to the County Jail, the medical report disclosed a "recent abrasion" (Abst. 189) and that petitioner complained of numbness and burning of his hands (Abst. 190).

We would remind your Honors that *no jury has ever passed upon Petitioner's claim of coercion.* The inquiry of the jury was limited to the truth or falsity of the confession. Thus, the jury was instructed that if the confession were coerced, that was one element they might take into consideration in determining its truth or falsity (Abst. 638-639). Throughout the proceedings against the Petitioner, it has been taken for granted that coercion is immaterial so long as the confession is reliable.

The Illinois view of the requirements of the due process clause, is at war with the holding of this Court that no man "can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." *Haley* v. *Ohio*, 332 U.S. 596, 601; 92 L. Ed. 224, 229. And we suggest that Petitioner's case would be an appropriate one for this Court to "take with a grain of salt", as in *Haley*, the police claim of "wonderful treatment", since that claim is contradicted by every circumstance in the record.

The Illinois doctrine notwithstanding, the due process clause of the Fourteenth Amendment requires something more than corroboration of a confession. As expressed by this Court, the Federal Constitution requires "that the forfeiture of the lives, liberties, or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed," which requirement is based upon "knowledge of the historical truth that the rights and liberties of people accused of crime could not

be safely entrusted to secret inquisitorial processes." *Chambers* v. *Florida*, 309 U.S. 227, 237; 84 L. Ed. 716, 722.

If the Illinois Courts are to be permitted to ignore this doctrine, as they did in passing upon the Petitioner's fate, the basic rights and liberties of all of the people of this State must suffer and wither in swift and direct consequence. In Petitioner's case, the Illinois Court has gone so far as to establish the precedent that the *greater* the number of policemen who handle a prisoner and then deny maltreatment, the less tenable is a claim of coercion.

The Supreme Court of Illinois, in Petitioner's case, has deliberately turned its back upon Petitioner's constitutional outcry with implied observations that Petitioner deserved no better than he got. Thereby, the Illinois Court has demonstrated its willingness to suspend the application of constitutional guarantees, particularly in those cases in which it is dealing with a "confessed criminal".

With his confession, Petitioner's status was altered from that of a presumptively innocent suspect, to that of a "confessed criminal", as a confessor is defined in Illinois (*People* v. *Hall*, 413 Ill. 615, 624; 110 N.E. 2d 249, 25). The difference was real, and ultimately proved determinative of Petitioner's fate.

When Petitioner became a "confessed criminal" instead of a mere defendant, the prosecutor felt privileged to invite the jury to "come out of that jury box" and to fire guns at Petitioner (Abst. 633); and felt privileged to challenge Petitioner in the presence of the jury, to take a lie detector test (Abst. 541-542). In Illinois, apparently, "confessed criminals" are to be accorded a different type of trial from that given mere defendants. But the difference between "confessed criminals" and presumptively innocent defendants is measured by the degree of success

the police have had in extracting from a defendant a confession during the period of his "accidental" detention. In consequence of this practice, we submit that the Petitioner was doomed by the police and not by the jury.

Conclusion.

For the foregoing reasons, we urge this Court to issue its Writ of Certiorari to the Supreme Court of Illinois to the end that the order of that Court affirming Petitioner's death sentence may be reviewed.

Respectfully submitted,

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(Opinion of the Supreme Court of Illinois.)

The People of the State of Illinois, Defendant in Error, v. *Paul Crump, Plaintiff in Error*, 12 Ill. 2d 402, 147 N.E. 2d 76.

Per Curiam: This case is again here on a writ of error to the criminal court of Cook County to review a trial wherein Paul Crump was found guilty of murder, his punishment being fixed at death. Paul Crump, David Taylor, Eugene Taylor, Harold Riggins, and Hudson Tillman were jointly indicted and tried for murder of one Theodore P. Zukowski who was shot and killed on March 20, 1953, while serving as plant guard at the Libby, McNeill & Libby packing plant in the city of Chicago. With the exception of Tillman, on the first trial each of the defendants was found guilty. Crump's punishment was fixed at death and the others 199 years imprisonment in the penitentiary. Tillman, who was granted a severance, testified for the State on the first trial but did not do so on the second. In *People* v. *Crump*, 5 Ill. 2d 251, we reversed and remanded for a second hearing, predicating the result principally upon the ground that Tillman was notoriously a drug addict and the defense was precluded from developing that fact on cross examination. It was contended that habitual users of opium are unreliable witnesses, thus Tillman's credibility would have been adversely affected if such proof had been allowed. This denial was held highly prejudicial.

We shall refer to Paul Crump in this opinion as the defendant. The record of this trial contains more than 1800 pages, and since our prior opinion contains a fairly complete account of what happened at the Libby, McNeill & Libby plant on March 20, 1953, we will omit all facts that are not pertinent to the legal issues here under consideration.

There have been assigned and argued many errors which the defendant contends justify a reversal. Much emphasis is placed on the alleged error committed by the trial court in failing to hold that People's exhibits 22 and 23, defendant's written confessions, were improperly obtained. It is urged that they are the product of oppressive, unfair and illegal conduct on the part of the prosecuting officials, thereby depriving defendant of rights guaranteed by the fourteenth amendment of the constitution of the United States.

It was on the evening of the same day Zukowski was killed that defendant was first arrested. Only accidentally was he picked up and questioned about several crimes. Three days later, after having allegedly been brutally mistreated, he confessed to nothing and was released.

Shortly thereafter Hudson Tillman surrendered himself to the sheriff of Cook County, and he then made a complete confession implicating all of the defendants named in the original indictment. On March 26, at about 3:00 A.M., ten police officers of the city of Chicago came into Crump's home and arrested him.

After being questioned for about nine hours, Crump and Taylor, at 1:30 P.M. on March 26, 1953, admitted their involvement in the Libby holdup in the presence of Richard Austin, First Assistant State's Attorney of Cook County, Irwin Bloch, Assistant State's Attorney, Chief J. T. O'Malley, Chief of Detectives, Capt. Frank Reynolds, 18th district, and several others. The question and answer interrogation taken by the court reporter embraces 25 pages in the abstract. This statement contained in much detail the facts involved in the planning and execution of the crime in question and their subsequent escape.

These are a few of the details elicited: Defendant had previously worked at the Libby, McNeill & Libby plant

and knew of their practices of handling payrolls on each Friday; the defendant planned the robbery about two weeks before its occurrence while he was gathered with a few of his confederates in a lounge on Forty-third Street; the defendant had no weapon of his own but he prevailed upon Hudson Tillman to supply the guns, which he did, consisting of a .32 revolver, .38 pistol and a sawed-off shot gun; it was arranged for the five to meet at 10:30 A.M. on March 20 under the L Station on Forty-third Street in Chicago and proceed to the plant in Harold Riggins's red Oldsmobile car; it was planned for Riggins to remain outside in his car and return to the plant at approximately 11:05 A.M.; the defendant led the procession into the plant for he was familiar with the operations, he struck the guard with a barrel of a shot gun and using the guard's revolver as well as his own, shot the guard Zukowski four times, causing his death; Tillman obtained the satchel and box containing the money; defendant Taylor, and Tillman wore blue hoods with two eyeholes that were made by the defendant from cloth purchased some place on Forty-third Street; the three participants wore rubber gloves that had been purchased at a drug store on Forty-third Street; the defendant went out another door than the one where Riggins was to appear so the defendant boarded a street car and went to the lake at Fifty-first Street where he threw his revolver in Lake Michigan "as far as I could possibly throw it."

Of considerable significance is the fact that the officers found the revolver at the place designated by the defendant. Of more than passing relevance is the fact that the inquiring officers asked the defendant about a grey felt hat, size 7, Dobbs make, bearing the name of J. G. Tobias, 2403 W. Madison Street, Chicago. Defendant said it was his hat that he wore on the day of the robbery and that it was lost in flight. In placing the hat upon his head, it

was found that it fit him. The mask and gloves also found in the path of defendant's departure were identified by him.

It was developed that People's exhibit 22 contained some inaccuracies. These minor discrepancies were ironed out so that People's exhibit 23 was prepared containing the final draft of what was agreed to be the truth. This document was signed on March 28, 1953, in the office of the State's Attorney of Cook County. Four civic leaders had been invited to witness this ceremony. Mrs. L. Robert Mellin was one of the four. It appears that she was a member of the board of education of the city of Chicago, and that her appointment was the result of endorsements of the leading clubs and civic groups of Chicago. She testified that the statements were read aloud by Mr. Austin and Mr. Bloch and that after defendant signed the statement she affixed her signature; that neither Paul Crump nor anyone else made any complaint to her, Mr. Austin or anybody else; that when Paul Crump was asked if he had been mistreated or abused they said "absolutely not, that they had wonderful treatment. Those were their words."

An examination of his testimony on the trial, however, reveals that defendant testified much to the contrary, stating at least twenty different specifications of mistreatment and duress. These are typical: He was struck with some object immediately upon being taken into custody on the occasion of his first arrest in connection with the crime charged; after being dragged by the back of the shirt, his feet were kicked out from under him, which caused him to fall on his side, and that a knee was pressed in his back, his tie was removed from his neck, his hands were tied behind his back therewith, and he was then placed against the wall of a building and searched; after

being taken to the Tillman home he was shoved to the floor when he concluded to leave; he was kicked in the side when he failed to give his name; three officers kicked him into the cell at the Stockyard Police Station when brought to the lockup at 12 o'clock midnight on March 20, 1953, after his clothes were searched and he was questioned during the 45 minutes previous; he was struck in the face once with the hand by Sgt. Pierce a few minutes after midnight; at daybreak two officers in uniform came to his cell, and struck him when he refused to answer them; he was suspended by his arms for three hours in the air with the "tops" of his toes touching the floor; he was struck in the stomach and kicked on his crippled foot while suspended and was threatened to be left hanging there if he did not talk. At the time of the second arrest he was held by the neck and pushed on the bed and a pistol put to him, and he was hit in the chest with revolvers by an officer "making" as if he was going to strike him; *etc.*

More than 50 witnesses testified on behalf of the State in refutation of these charges. Every police officer who had any part in the arrest, transportation, detention or questioning of the defendant denied mistreating, striking or in any way abusing the defendant or having seen any other person do so. The State's Attorney and two of his assistants denied making any threats or offers of inducement to obtain the confessions; the court reporter who made the stenographic notes of the confessions, denied there were any threats or inducements offered by any person in his presence; four citizens who witnessed the signing of the defendant's confessions, testified they heard the defendant and his codefendant say, in answer to questions as to whether they or any one of them was mistreated or abused, that each of them had been treated well; his own doctor and the doctor who witnessed the sign-

ing of the confession by the defendant could not find a bruise, welt or mark of physical violence or injury in their respective examinations of the defendant.

In defendant's testimony we find that he denied his involvement in the robbery at Libby, McNeill & Libby on March 20, 1953, stating that he was not near the premises on that date; that he did not shoot and kill Theodore Zukowski, nor did he strike anyone with the iron bar, nor did he see any of the several persons who appeared against him as witnesses on this trial. He readily admitted on cross examination that he had been interrogated by the assistant State's Attorney concerning his involvement. He agreed that he had stated in his confession that he was 22 years of age; that he was employed at Harvey, Illinois; that he worked in a material yard off and on for a period of two years; that he was making $54 per week take-home pay; that he had known Dave Taylor about eight months and that he had known Gene Taylor about six months, *etc.* But when asked about anything in his confession that pertained to the crime in question, the defendant flatly denied making any statement that even implied his connection therewith.

On rebuttal the State called the deputy clerk, Samuel Rosen, of the criminal court of Cook County, who had with him the official records of the criminal court. He testified that he had the record showing the order for the impaneling of the grand jury for the November term, 1946, the return of three indictments against Paul Crump for armed robbery, numbers 46-2507, 46-2508, and 46-2509. When the State's Attorney sought to have the docket entries marked as an exhibit for identification, defense counsel interposed the following: "I can make it easier for you, the witness is going to give a statement to the effect that a grand jury returned an indictment against

Paul Crump, alleging robbery while armed. The statement in addition thereto will be that Paul Crump, came into court, pleaded not guilty to that charge; and that the witness is also going to state that the record shows that there was a waiver of the jury by the defendant at that time in the year 1946; that there was a hearing, trial by the court without a jury and a finding of guilty and judgment was entered on the finding."

The witness then read from the journal the proceedings relative to the foregoing indictments. There was a finding of guilty as to each of the three indictments and defendant's age was found to be sixteen years. The objection in the trial court was to the reading of the records of the multiple convictions to the jury. Defendant's counsel said he had no quarrel about the conviction of Crump in 1946 but objected to a showing of the details when the only purpose was to affect his credibility. We do not believe that the reading of the facts contained in the official record, under the circumstances here appearing, constituted error. The official record would have been properly identified but for the volunteered stipulation of defense counsel. The statute (Ill. Rev. Stat. 1955, chap. 38, par. 734) authorizes the showing of a prior conviction to affect the credibility of a witness. This court has held frequently that this may be established by the production of the record of conviction or an authenticated copy of the record. *People* v. *Parks*, 321 Ill. 143; *People* v. *Bartkus*, 7 Ill. 2d. 138, 142.

Considerable attention is devoted by counsel for defendant to the discussion of alleged errors of the trial court in restricting both his cross and direct examination of many witnesses. No good purpose would be served in prolonging this opinion to the extent required to give detailed consideration to this complaint. Suffice it to say, that we find no merit in this contention.

It is also argued that the prosecution's argument was inflammatory and prejudicial. Counsel who represented defendant at the trial undertook to convey the idea to the jury that since this case had lingered for three years there must be some doubt about defendant's guilt. Such an unfair argument deserved severe treatment and received it.

Defense counsel also found occasion to discuss with much emphasis the failure to produce Tillman, Taylor and Riggins as witnesses, stating that they are out roaming the street. The State's Attorney replied to this argument effectively and appropriately. His argument was predicated upon the evidence adduced and logical inferences arising therefrom, and was in answer to arguments made by defendant's counsel. The defendant was permitted to argue in his own behalf. It was a splendid effort to evoke sympathy and humane consideration. But for the overwhelming proof of guilt, the result could have been different.

Two juries with the approval of two judges have found defendant guilty and decreed the extreme penalty. We have examined the long record critically and considered all claims of alleged mistakes in the trial. We find not one of a substantial or reversible character.

The judgment of the criminal court of Cook County is affirmed. The clerk of this court is directed to enter an order fixing Friday, January 31, 1958, as the date on which the sentence entered in the criminal court of Cook County on said judgment shall be executed. A certified copy of this order shall be furnished by the clerk of this court to the sheriff of Cook County.

Judgment Affirmed.

(Opinion of the Supreme Court of Illinois.)

The People of the State of Illinois, Defendant in Error v. *Paul Crump, Plaintiff in Error*, 5 Ill. 2d 251, 125 N.E. 2d 615.

BRISTOW, Chief Justice.

The plaintiff in error, Paul Crump, hereinafter referred to as defendant, has brought a writ of error to review and reverse his conviction of murder and his sentence to death in the criminal court of Cook County.

The defendant, together with David Taylor, Eugene Taylor, Harold Riggins and Hudson Tillman, was jointly indicted for the crime of murder of one Zukowski, chief of plant guards at Libby, McNeil & Libby in the Chicago Stockyards, during a robbery which occurred on March 20, 1953.

Tillman, whose name appeared on the list of witnesses filed by the State, was granted a severance by the court and the rest of the defendants submitted their cause to a jury. The jury returned verdicts finding Crump, the two Taylors and Riggins guilty and setting the punishment of Crump at death and that of each of the other three at 199 years in the penitentiary.

On the same day as the payroll robbery and alleged murder, the defendant, Crump, together with certain other defendants, was picked up by the Chicago police, taken to the Stockyards Police Station, and questioned concerning the robbery and murder. After extensive questioning, Crump and the defendants picked up with him were released on March 23. Hudson Tillman surrendered himself to police authorities through his attorney, and, as a result of his complete confession the defendant Crump, with the other defendants, was rearrested on March 26. On

March 27 statements were allegedly made and signed by the two Taylors, Riggins and the defendant, Paul Crump, in the office of the State's Attorney.

On March 31, 1953, the defendant was jointly indicted with the other four for the murder, and the defendant, with the others, was arraigned and pleaded "not guilty." On April 13 the defendant, through his counsel, presented a motion to be examined by a competent physician and surgeon and to be permitted to have a photographer and the court reporter present at the time of the examination, which motion was denied by the court after a hearing.

On May 5, the defendant Crump presented a motion for change of venue, for a list of the names of jurors and witnesses, for a bill of particulars, and also for a continuance from May 11, the date for which trial had been set, to a later date in order to permit adequate preparation for trial. The motion for change of venue and for a list of names of jurors and witnesses was allowed. The bill of particulars was denied, and the trial date was set for May 18.

The selection of the jury was begun on May 18, 1953, and after numerous panels were exhausted, a jury was finally selected and sworn on June 4 and the cause proceeded to hearing through June 19, on which date a verdict of "guilty" was returned. Thereafter motions for new trial and in arrest of judgment were denied and sentence pronounced.

Without attempting to recite the testimony received in evidence in detail, suffice it to say that numerous witnesses testified as to facts surrounding the alleged robbery and murder, including Hudson Tillman, one of the co-defendants in the indictment, and the alleged statements by each of the defendants were admitted in evidence after a limited preliminary hearing on their admissibility. Crump and

each of the other defendants testified in his own behalf along with other defense witnesses attempting to establish alibis.

The defendant Crump is the only party to have brought writ of error to review the verdict and sentence, and assigns fourteen errors as a basis for reversal. Those fourten errors were argued in etail in the written brief. Argument of Crump and the errors complained of may be summarized as follows: The admissions of improper evidence on behalf of the State; the refusal to admit proper evidence on behalf of defendants; the admission of certain exhibits on behalf of the State; the failure to prove the defendant guilty beyond all reasonable doubt; the refusal to give certain instructions asked by the defendants; the limitation of examination of State's witnesses by the defense; the refusal to grant defendant additional time in which to prepare his case adequately; failure to have a complete preliminary hearing as to admissibility of alleged statements; questioning by the court of jurors as to their qualifications respecting the death penalty; conversations by the court with four sworn jurors when counsel was not present; denial of the motion for physical examination of defendant with photographer and shorthand reporter present; calling a court's witness on preliminary hearing without request from either side, and permitting the State, on the trial, to refer to his testimony as a court's witness without such witness testifying before the jury; improper and prejudicial arguments and conduct of an Assistant State's Attorney; and the verdict being the result of passion and prejudice and contrary to the law and evidence.

The record before us is voluminous, the defendant was aggressively represented, and the trial was a bitter one. No trial judge can be expected to sit as an arbiter in such a contest without the intervention of error. Too many rulings must be promptly made in the hurried process of

trial for there to be a perfect record. Were the mistakes made of such a character that they constituted reversible error?

Defendant's involvement in the occurrence at Libby, McNeil & Libby plant on March 20, 1953, was clearly established by the testimony of Hudson Tillman, an accomplice. His testimony was therefore of great importance. It is claimed on this review that defendant's counsel in the cross examination of Tillman was unduly restricted. It is universally recognized that the testimony of an accomplice is fraught with weaknesses, due to the effect of motives, hope of leniency or benefits, or the effect of fear, threats, hostility, etc. Defendant's counsel in his oral argument before the court emphasized this as a basis for reversal. The trial court sustained objections to questions propounded on cross examination of Tillman as to whether he was a narcotic addict or user of narcotics.

The specific questions asked were "Are you a narcotic addict? Do you take the stuff?" "Did you ever take herion?" and "Didn't you, on March 20th, buy some narcotics and pay $17.00 for it?"

The defendant Riggins testified that after he met Tillman on March 20, 1953, he drove with Tillman to Kankakee; that Tillman wanted to stop at Robbins; that Tillman entered a house and stayed five to fifteen minutes at the most; that Tillman came out, entered the car and Riggins noticed he was pale and was talking foolishly, and he could not understand him even though he tried to make sense of Tillman's conversation; that he looked at him later and Tillman's eyes were rolling around in his head; that Riggins got some ice and Tillman was "slobbering and whatnot over himself;" that he drove to Elsie Cameran's home on 130th near Michigan; that Riggins

was afraid Tillman was passing out on him; that Elsie denied him admission to her home; and that he packed ice around Tillman's head, under his arms and over his chest and then drove to Kankakee.

Tillman was in custody of the State's Attorney's office in the witness quarters and readily available to testify in rebuttal, but none of the above was contradicted by him.

The witness Tillman was a codefendant, who had been jointly indicted with the others, and upon his being listed as a State's witness his trial was severed from that of the other four. His testimony on behalf of the State implicated the defendant Crump and others in the alleged crime. If his testimony was fully believed by the jury, it would have had a substantial bearing on the jury's findings and conclusions, both as to guilt and recommendations as to penalty.

The error assigned presents a clear-cut question of first impression in this State as to whether or not an accomplice witness can be properly cross-examined as to the witness's drug addiction for the purpose of impeaching the witness's credibility. In support of the contention that such cross-examination is proper, the defendant has cited three Illinois cases, *People* v. *Bond*, 281 Ill. 490, 118 N.E. 14, 1 A.L.R. 1397; *People* v. *White*, 251 Ill. 67, 95 N.E. 1036, and *People* v. *Winchester*, 352 Ill. 237, 185 N.E. 580. In the *Bond* case [281 Ill. 490, 118 N.E. 18] the court held it was proper for the State to cross-examine a defense witness as to whether or not she was the keeper of a house of ill fame, saying: "If a witness is engaged in an unlawful and disreputable occupation, in justice and fairness he should not be permitted to appear before the jury as a person of high character who is engaged in a lawful and respectable occupation." In the *White* case [251 Ill. 67, 95 N.E. 1039] it was held proper for the State to cross-

examine a defense witness to bring out the fact that he operated a gambling house, saying: "The law does not permit proof of other offenses, not connected with the charge upon which the defendant is being tried [citing cases,] but the prosecution could not be hampered nor restrained in perfectly legitimate cross-examination, because an inference unfavorable to defendant might arise. Surely the prosecution was not required to permit this witness to appear before the jury as a man of high character and worthy of confidence, when he was disreputable and his chief occupation that of a lawbreaker." In the *Winchester* case this court reversed a conviction of the defendant in which he was sentenced to death, for the refusal of the trial court to let the State's argument be taken down and for unduly limiting the cross-examination of a witness to show that such witness's house was a house of prostitution, stating, 352 Ill. at page 244, 185 N.E. at page 583: "It was proper for the defendant to bring out this fact on cross-examination as a matter affecting the credibility of the witness. *People* v. *Bond*, 281 Ill. 490, 118 N.E. 14, 1 A.L.R. 1397. The court erred in unduly restricting the cross-examination of witness Cox." And in 352 Ill. at page 247, 185 N.E. at page 584 the court used this language which is of value in resolving the problem before us. "The denial of this right, together with the error in unduly limiting the cross-examination of the state's witness Cox, must, in view of the circumstances under which improper and incompetent evidence prejudicial to the defendant was put before the jury, be held to be grounds of reversal in this case. Since the jury in this case had a wide discretion in fixing the punishment, and did by its verdict fix the maximum punishment, death by electrocution, it is not a case where this court could affirm the judgment notwithstanding prejudicial error, even if it could say that the proof of guilt was clear. [Citation.] This court has many times ruled that in the trial of a murder

case, in which the punishment may be by confinement of the defendant in the penitentiary for fourteen years only or for the term of his natural life, or in which the death penalty may be fixed, evidence must in those cases be admissible which would not have been admissible, or, if admissible, could have availed nothing at common law. For these reasons evidence must be admitted if it tends to prove a substantial ground to lessen the punishment and to reduce it below the maximum punishment fixed for murder. On the other hand, for similar reasons, this court has refused to sustain the maximum punishment in cases in which prejudicial error against a defendant had been committed, although the evidence showed that the highest crime known to the law—the murder of a human being in the peace of the people—had been committed."

Courts in other jurisdictions have reached conflicting conclusions as to this general question. In *State* v. *Prentice*, 192 Iowa, 207, 183 N.W. 411, 15 A.L.R. 904, the defendant appealed from a judgment convicting him of larceny of an automobile, in which appeal one of the assignments of error was the admission of evidence as to the use of drugs by one of the defendant's witnesses. The defendant's witness in question had been evasive in answering questions on cross-examination as to her use of narcotics and had denied the use of the drug and that she had purchased any of doctors. A doctor was permitted to testify on behalf of the State, over objection, that the witness had obtained narcotics from him. The defendant did not claim that the cross-examination of the witness as to the use of narcotics for the purpose of impeaching credibility was improper, but contended that the State was bound by her answers and might not impeach her thereon. The Iowa court, after considering various cases apparently touching upon this particular question, held that the evidence was admissible and proper to be considered by the jury for

what it was worth, largely relying for its conclusion upon the fact that insincerity of a witness may be shown. That case, however, does not pass upon the precise question here presented to the court.

In the annotation following the report of the *Prentice* case in 15 A.L.R., beginning at page 912, under the subject of "Use of drugs as affecting competency or credibility of witness," it is stated editorially that the rule followed by the majority of cases appears to be that for the purpose of discrediting a witness evidence is inadmissible to show that he is a user of opium, morphine or similar drugs or to show the effects of the use of such drugs unless it is proved that the witness was under their influence at the time of the occurrence as to which he testified, or at the time of the trial, or that his mind or memory or powers of observation were affected by the habit.

The substance of these holdings as indicated in *State* v. *King*, 88 Minn. 175, 92 N.W. 965, and *Katleman* v. *State*, 104 Neb. 62, 175 N.W. 671, seems to be that whether the witness is a narcotic addict or not is a collateral issue which the court will decline to try; that since the witness is before the court his mental condition is obvious to both court and jury, and it is for them to say whether he is in a condition of mind to understand and appreciate his testimony, whether he is fabricating or whether his testimony is straight-forward and unequivocally given; and that the witness' appearance, demeanor and manner of testifying are sufficient to inform the jury of his mental condition and of his credibility. Although such may be the proper rule as to admissibility of expert testimony to prove the nature of drug addiction and its effects, the present question is as to the propriety of cross-examination of an accomplice to show the mere fact of drug addiction as affecting his credibility.

There are decisions from other jurisdictions, as noted in the above referred to annotation in American Law Reports, that it is proper to show, by cross-examination of the witness himself, that the witness is a habitual user of narcotics, and to establish by competent evidence the effect of such use upon mental faculties of the witness. *Beland* v. *State*, 86 Tex.Cr.R. 285, 217 S.W. 147; *State* v. *Fong Loon*, 29 Idaho 248, 158 P. 233, L.R.A. 1916F, 1198; *Anderson* v. *State*, 65 Tex.Cr.R. 365, 144 S.W. 281; *People* v. *Webster*, 139 N.Y. 73, 34 N.E. 730; *State* v. *Concannon*, 25 Wash. 327, 65 P. 534; *Wilson* v. *United States*, 232 U.S. 563, 34 S. Ct. 347, 58 L.Ed. 728.

The general rule in Illinois, as established by the *Bond*, *White* and *Winchester* cases referred to above, is that it is proper to cross-examine a witness to bring out the witness's unlawful and disreputable occupation and activity as a matter affecting credibility.

The admissibility of such evidence seems to be recognized in 3 Wigmore, Evidence, 3d ed. 1940, sec. 934, where the author states: "Any diseased impairment of the testimonial powers arising from whatever source ought also to be considered." Although stating that the drug habit in that it may have such an effect, should accordingly be considered, the author does recognize that all courts have not yet gone so far. Among the cases cited by the author supporting his general conclusion is *Chicago & Northwestern Railway Co.* v. *McKenna*, 8 Cir., 74 F. 2d 155, 158. Although this was a civil action for damages, the trial court had withdrawn from consideration of the jury evidence of drug addiction brought out on cross-examination and instructed the jury to disregard it. In reversing, the Circuit Court of Appeals stated: "We think this action of the court was error and that the defendants should have been permitted to show in cross-examination of ap-

pellee or otherwise that he [appellee] was an habitual user of drugs and to develop by competent evidence the effect which continued addiction might have upon one's mental faculties, irrespective of whether he was under the immediate influence of the drug at the time of the occurrence. *People* v. *Webster*, 139 N.Y. 73, 34 N.E. 730. We think it had a direct bearing upon his credibility and also upon the question of who may have been the aggressor in the quarrel occurring in the railroad yards."

On oral argument of this case, counsel for the People admit that the proffered questions on cross-examination as to drug addiction of the accomplice witness were proper, but they attempt to avoid such confessed error on the theory that the jury was properly instructed by the court as to the weight to be given testimony of an accomplice; that the defense had an opportunity to supply witnesses to prove drug addiction of the accomplice witness; and that the evidence in the case, without that of the accomplice witness, conclusively established guilt, and such testimony was unnecessary.

In *State* v. *Fong Loon*, 29 Idaho 248, 158 P. 233, 236, L.R.A. 1916F, 1198, it is stated "habitual users of opium, or other like narcotics, become notorious liars. • • • 'The chronic morphinomaniac is often a confirmed liar. The truth is not in him.' • • • The capacity of a witness to observe and to receive accurate impressions, to retain them in his memory, and to correctly relate them, also his power and inclination to be truthful, are all subjects which go to the credibility of a witness."

In our opinion, the jury was entitled to know whether Tillman, the accomplice witness, was or had been a drug addict or had used narcotics on the day of the alleged crime, it being a very important factor going to the general reliability of his testimony. The refusal of the

court in this case to permit cross-examination along such lines was prejudicial and reversible error.

Defendant further sought to show on cross-examination that Tillman entertained a feeling of hostility toward the Crump family because defendant's brother had wronged Tillman's sister. The testimony of an accomplice should be scrutinized carefully. It was an area of proper inquiry for the defendant to determine if there was ill will engendered in Tillman because his sister had become an unwed mother as a result of defendant's brother's illicit relations with her.

It is also urged that the court erred in denying the defendant Crump's motion for continuance. On May 5, 1953, defendant's counsel filed motion for continuance supported by affidavit showing that counsel was engaged in the trial of a civil jury case continuously from April 7, 1953, to and including April 30, and that on that date the wife of defendant's counsel had entered the hospital, where she remained until May 3, and asserting that counsel had been unable to prepare for trial from April 24 to the date of the filing of the petition. No counter-affidavits were filed by the State. On May 6, the day such motion was argued, the State furnished the defendant with a list of 48 witnesses, about which the court was advised by counsel for defendant, and that it would be necessary for him to investigate each of such witnesses. From the record it appears that counsel had represented defendant since March 27. The indictment was returned March 31, and on April 13 the case was set for trial for May 11, and at the time of the hearing on the motion the court ordered the case set for trial May 18, a little over ten days from the date of hearing of the motion. The record is silent as to any urgent reason for the State or the court to proceed to trial, and the State was avowedly seeking the death

penalty. A motion to continue a cause, as here presented, is addressed to the discretion of the court. *Benton* v. *Marr*, 364 Ill. 628, 5 N.E. 2d 466. However, on a charge of murder, where the prosecution is seeking the death penalty, every reasonable opportunity should be given the defendant to investigate witnesses against him and to prepare his defense.

It is our opinion the court abused its discretion in denying the defendant adequate time to prepare his defense in this case. Ten or eleven days to investigate 48 State witnesses and to prepare for cross-examination thereof and to prepare the defense in chief in a capital case can hardly be deemed reasonable and the trial court should have continued the case to a later date.

Defendant further assigns as error the denial of defendant's motion for permission to have a physical examination in the county jail, with a shorthand reporter and a photographer present. Such motion was made on April 13, 1953. No reason is shown in the record for the court's denial of such motion. It should be noted, however, that the defendant's contentions of brutality in obtaining alleged statements is directed to the date of March 27 and times prior thereto. The record shows that on March 28 all defendants were stripped and examined by a doctor and no complaints of any kind were made to him. Considering the time lapse between the acts of alleged brutality and the request for examination by the defendant, and the fact that a physical examination was actually made by a doctor immediately after the alleged signing of the alleged statements, we cannot say that the trial court abused its discretion, in denying such motion, or that the defendant was in any way prejudiced.

The written brief and argument of defendant also assigns as error that it was improper for the trial court

to have lengthy conversations with four jurors, who had been accepted and sworn to try the issues, out of the presence of counsel for either side, and not to bring the matter discussed to the attention of counsel for the defendant. The State's brief points out that the record of proceedings discloses that the court advised counsel in chambers that the four jurors had talked to him, that the conversations had been transcribed by a court reporter, and that the record of such conversations was read to counsel. Counsel for defendant on oral argument concedes that state of facts to be true and that his contention was the result of an oversight in studying the record. The record does not show any objection or exception to such occurrence by counsel for defendant or motion for mistrial, and nothing appears from such incident to have prejudiced the defendant of which the defendant can complain.

It also appears that the trial court, during the selection of the jury, questioned each of the several special venires collectively as to whether or not they had any conscientious or religious scruples against the infliction of the death penalty. In the course of such collective questioning of each special venire the court excused for cause those that admitted matters which disqualified them from service on this particular jury. Error is assigned as to this procedure but such objection is not well taken. There was no questioning at great length and no repeated questioning of the same venire. The inquiry as to whether any of the jurors had moral or religious scruples against the inflicting of the death penalty in a proper case and the excusing of those who had was within the court's province. Frequently this practice is adopted by courts as a time saving measure.

Objection is also made to the fact that the trial court permitted the first assistant State's Attorney to testify in

rebuttal although such witnesses had been present during the trial and an order excluding witnesses had been made. The record shows that Mr. Austin, the first-assistant State's Attorney who had been instrumental in the taking of defendant's alleged statements and confessions, appeared on the list of witnesses furnished the defendant by the State and that the court ordered all witnesses in the case to be excluded, even at the time of the picking of the jury. Austin participated in the trial and at the time of exclusion had agreed that all witnesses be excluded. At the time the accomplice Tillman was called as a witness, defendant's counsel asked the court to exclude Austin from the courtroom. After the jury was excused Austin advised the court that he had been informed that he would not be called as a witness regardless of the fact that his name was on the witness list, and another assistant State's Attorney conducting the case confirmed such statement. The court then said that it would take the assurance of Austin, and the State agreed to cross Austin's name off the list, and he was permitted to remain in the courtroom. Further objections by defendant's counsel to Austin's presence were overruled.

Austin had taken a leading part in the interrogation of the defendants at the time of their arrest and at the time their alleged confessions were made. He also took an active part in the trial of the case and upon being called as a rebuttal witness testified, over objection, that he took statements from certain of the various defendants, identified each of said alleged statements, and testified, over objection, that he took statements from certain of the various defendants, identified each of said alleged statements, and testified over objection, that he took statements from certain of the various defendants, identified each of said alleged statements, and testified

as to what happened at the time of taking them and conversations that occurred at such times. Although part of his testimony rebutted testimony given by the defendants on the stand, a large portion of his testimony properly belonged to the State's case in chief. A trial court is vested with discretion in permitting a witness to testify, even if an order excluding witnesses has been entered. *People* v. *Godsey*, 334 Ill. 11, 165 N.E. 178; *People* v. *Sink*, 374 Ill. 480, 30 N.E. 2d 40; *People* v. *O'Malley, Jr.*, 404 Ill. 165, 88 N.E. 2d 454; *People* v. *Thomaszewski*, 406 Ill. 346, 94 N.E. 2d 154. The fact that a part of the testimony of a witness might also have been competent in chief does not necessarily render it improper for reception in rebuttal. *People* v. *Drysch*, 311 Ill. 342, 143 N.E. 100; *People* v. *Leach*, 398 Ill. 515, 76 N.E. 2d 425. However, as held in *People* v. *Castree*, 311 Ill. 392, 143 N.E. 112, 32 A.L.R. 357, the prosecution ought not, with knowledge of important testimony at its command, close its case without introducing it and then, after the defendant has introduced his testimony, be permitted to open up its case anew and introduce evidence in chief which it could have produced at the proper time but withheld. A prosecuting attorney owes a duty to conduct his examination of a witness fairly, regardless of whether objection is continuously made or not. *People* v. *Botulinski*, 383 Ill. 608, 50 N.E. 2d 716. Here the prosecution knew, or should have known, of the importance and materiality of Austin's testimony in their case in chief, and in view of assurances made by the prosecuting attorney and Austin himself, a serious question exists as to the propriety of the court permitting Austin to testify in violation of the rule excluding witnesses unless his testimony was limited by the prosecuting attorney strictly to rebuttal testimony. Although such trial court action in and of itself alone would not prejudice the defendant, yet, since other errors warrant a re-

versal and remandment, such a situation should not be permitted to recur on a new trial.

On the preliminary hearing as to the admissibility of alleged confessions, during an examination of the defendant Crump, the court inquired about a Dr. Rosen's name and address and directed the clerk to subpoena such doctor for the following day as a court's witness. No request therefor had been made by either the prosecution or the defense, and no representations were made by either that they would or would not vouch for such witness. The following day the doctor appeared in response to such subpoena and as a court's witness testified that he made the examination of the defendant Crump on March 25; that from such examination the defendant was found to have a cold; that there were no marks or bruises of any kind; that the defendant had a temperature at that time of 103.6; that the defendant was fluoroscoped; that no pathology was indicated and that all the doctor was interested in was his lungs and he was not interested in pathology. Dr. Rosen was not called as a witness by either side to testify before the jury, but during the cross examination of defendant Crump the latter was asked, over objections, if he had heard Dr. Rosen testify outside the presence of the jury; that if he heard Dr. Rosen testify that Crump only had a cold; and if he knew that Dr. Rosen was called as a court's witness after Crump had testified about a severe beating he had received. In the closing argument to the jury, the State referred to this testimony. The defendant assigns as error both the calling of Dr. Rosen as a court's witness on the preliminary hearing and the prejudice from the State's reference, on cross examination and in the argument to the jury, to Dr. Rosen as a court's witness and to the testimony he had given outside the presence of the jury. The ten-

dency of Dr. Rosen's testimony at the preliminary hearing, and as referred to before the jury, was to rebut the defendant Crump's alibi of an incapacitating illness of pneumonia on the date of the alleged crime and his claim of brutality while in custody of the police. It is a general rule that a witness should not be called by the court as a court's witness unless it is shown that otherwise there may be a miscarriage of justice or the requesting party, for a reason about which he informs the court, doubts the integrity or veracity of the witness. *Carle* v. *People*, 200 Ill. 494, 66 N.E. 32; *People* v. *Cleminson*, 250 Ill. 135, 95 N.E. 157; *People* v. *Cardinelli*, 297 Ill. 116, 130 N.E. 355; *People* v. *Johnson*, 333 Ill. 469, 165 N.E. 235.

We can see no impropriety or prejudice to the defendant by the court calling Dr. Rosen as a court's witness on the preliminary hearing as to the admissibility of the alleged confessions, as such action was very proper in order to prevent a possible miscarriage of justice, even though neither State nor the defense requested the witness to be called by the court. However, the court was in error in permitting the State, over objection, to bring out by cross examination and to refer in argument to statements of a party who had not been called and who had not testified before the jury. It is fundamental that both the defendant and the jury should be confronted with the witnesses themselves under oath and have the benefit of both their sworn testimony in chief and under cross examination. A somewhat analogous situation was considered in *People* v. *Lettrich*, 413 Ill. 172, 108 N.E. 2d 488. The cross examination and argument by the State's Attorney could have given the jury the impression that Dr. Rosen had testified that the defendant Crump had no marks or bruises about his body at the time of the doctor's examination without bringing to the jury's attention the doctor's qualification in his earlier testimony that he was only in-

terested in Crump's lungs and not in pathology. The net result of such cross examination and argument deprives the defendant of his constitutional right of confrontation of witnesses and the right to cross examine witnesses against him, and it is impossible to speculate as to how much influence such fact had upon the jury reaching the conclusion they did as to guilt and infliction of the extreme penalty.

The errors assigned on the refusal of the court to give certain instructions have been carefully considered and are not well taken except for the one requested instruction that it was the duty of the jury to consider the prisoner's case as if he were a white man, for the law is the same as to both white and colored men, there being no distinction in principles in respect to color. The defendants in this case were all Negroes. The deceased and most of the deceased's witnesses were Caucasians and the jury was composed entirely of white people. In the recent case of *People* v. *Kirkendoll*, 415 Ill. 404, 114 N.E. 2d, 459, we commented upon the lower court's refusal to give the same exact instruction and declared that refusal to give such instruction was error. The State attempts to distinguish the *Kirkendoll* case because of the fact that there the offense involved a colored man charged with raping a white woman and because the court stated in the opinion that there was more than a reasonable doubt of defendant's guilt, suggesting that there can be no doubt as to the guilt of the defendant in this case and that the need and necessity of such an instruction is nonexistent today. Although it is true that today, under our legal and social system, it should not be necessary to ask for, seek, or expect to receive any special instructions because of race, color or creed, yet we must recognize that our American system of justice and equality before the

law is still administered by human beings and is therefore necessarily subject and exposed to the imperfections of human frailities and prejudices.

Extensive objection and argument is also made as to improper and prejudicial remarks by the prosecutors justifying a reversal. An examination of the record discloses numerous instances of remarks and conduct by counsel for both the People and the defendant made during the heat, tension and strain of a strenuously and bitterly tried capital case which, in the interest of a fair and impartial trial before a jury, would have been better left unsaid and undone. Inasmuch as this conviction must be reversed for errors hereinabove considered, we feel it is unnecessary to further extend this opinion with a detailed consideration of the claimed infractions of the rules.

The extreme penalty having been imposed in the case prompts us to attach increased importance to the errors herein discussed, and to reach the conclusion that defendant's conviction did not result from a trial free of substantial and prejudicial error. A new trial is ordered.

Reversed and remanded.

(Editorial—Chicago Sun-Times, March 11, 1958.)

Cloak For Police Brutality.

Pretending that such things don't exist will not put an end to police brutality or the illegal detention of persons arrested without a warrant. Nor will a general public attitude that "it can't happen to me" help alleviate the situation.

An extensive survey conducted by the Illinois Division of the American Civil Liberties Union shows that illegal detentions are so widespread as to concern all Chicagoans, any of whom could run afoul of the law through little fault of their own.

The survey covers the year 1956. Preliminary findings indicate that Chicago police arrested without warrant, and held incommunicado for two days or more, at least 250 prisoners a month—or a total of at least 3,000 for the year.

Such practices not only violate Illinois law but, more importantly, they constitute a denial of the bail guarantee in the Constitution's Bill of Rights. Even if it is assumed for the sake of argument that many of the persons so detained may not be the most savory characters in Chicago, the practice should still be repugnant to the public at large. For if the police can get away with illegal detentions in such instances, they will eventually be emboldened to make the practice a habit in the arrest of most citizens.

The manner in which the police treat even the most hardened criminal should be of grave concern to even the most law-abiding of our citizens. When the police can, with impunity, violate the constitutional rights of any person,

no matter how unworthy he may seem to be, the police tend to become contemptuous of the rights as they apply to more respectable citizens.

Moreover, as Kenneth Douty, ACLU director for Illinois, has pointed out, the violation of one right leads invariably to the violation of others. A person who is being illegally detained is more likely to suffer police brutality than one who is promptly admitted to bail.

In a recent statement, Douty illustrated the point by citing the case of Leslie G. Wakat, a machinist recently awarded $15,000 damages by a federal jury here after he was imprisoned seven years on a confession he said Chicago police forced from him by torture. The award was upheld last week in a decision written by Judge Elmer J. Schnackenberg for a unanimous three-man U.S. Circuit Court of Appeals.

Wakat, with a previous record of burglary, was picked up by police on suspicion of burglary and arson in 1946. He was held incommunicado in Town Hall Station for six days, during which he was severely beaten by police according to the findings of the U.S. District Court jury. He finally signed a confession and was sentenced to prison for 10 to 20 years.

After Wakat served seven years, the state Supreme Court upheld his petition for a new trial, whereupon the state's attorney's office dropped the case against him. There is no evidence, except the confession obtained under torture, that Wakat committed the crime with which he was charged and first convicted.

As Douty put it: "The Wakat case typifies the sort of shocking police behavior which is inevitable so long as our law enforcement agencies continue their present illegal

system of holding 'suspects' incommunicado in police stations for days prior to bringing them before a magistrate."

Illegal detention is too often a cloak for the third degree and other police evils. What happened to Wakat could well happen to most citizens under relatively innocent circumstances. It is nothing for the public to be complacent about.

(Article—Chicago Sun-Times, March 29, 1958.)

Open Probe on Civil Rights, Police.

A federal grand jury has begun an investigation of alleged civil rights violations by the Chicago Police Department.

U.S. Atty. Robert Tieken informed Police Comr. Timothy J. O'Connor on Friday that the investigation by the March grand jury, is under way.

Two witnesses already have testified, reportedly telling of police brutality and illegal detentions.

They are Norman Feldman, a social worker with the Chicago Youth Centers, and Donald Page Moore, staff counsel of the American Civil Liberties Union, Illinois Division.

Scope Of Probe.

The investigation, it was learned, will focus on Fillmore Police Station, 4001 W. Fillmore, but will fan out to include other districts and many policemen. It may last for months.

Feldman, supervisor of a gang of teen-agers, reportedly told the jury of an alleged beating and illegal detention of James Halsell by two Fillmore policemen, Nathan Crossley and Ernest Charles.

Halsell, 18, of 4322 W. 17th, was arrested May 3, 1957, with two teen-age companions.

Crossley and Charles, Feldman reportedly told the jury, beat Halsell on the back with whips, belts and a soft leather blackjack. They held him incommunicado for 48 hours, then charged him with disorderly conduct, it was alleged. Halsell later was found not guilty in Municipal Court.

Companions Sentenced.

His two companions, whom he said he heard screaming in the Fillmore station, were tried in Criminal Court for armed robbery. They asserted that they had confessed under duress but were found guilty and sentenced to 1-to-4-year terms in Stateville Penitentiary.

Moore, of the ACLU, has studied 2,200 Municipal Court files. He said they indicated that 16,000 citizens were detained illegally by Chicago police in 1956.

"We know what we're talking about," he said. "This is a conservative estimate. The exact figure probably is three or four times as high." Moore has been invited to reappear before the jury on Wednesday.

Mayor Orders Check-up.

Mayor Daley said he has asked O'Connor to survey police detention methods to determine if any prisoners have been illegally held for long periods of time.

Daley noted that in investigations, it takes time to confront a suspect with witnesses.

The ACLU, however, said that in April, 1955, Daley filled out a questionnaire stating that, if elected mayor, he would favor booking suspects immediately after arrest, taking suspects to court not later than the morning after arrest, and discharging policemen who violate those two principles.